

REFERENCE TITLE: consumer fraud; unlawful practices

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

HB 2303

Introduced by
Representative Reagan

AN ACT

AMENDING SECTIONS 44-1524, 44-1528, 44-1531 AND 44-1533, ARIZONA REVISED STATUTES; RELATING TO CONSUMER FRAUD.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 44-1524, Arizona Revised Statutes, is amended to
3 read:

4 44-1524. Powers of attorney general

5 A. If the attorney general has reasonable cause to believe that a
6 person has engaged in, is engaging in or is about to engage in any practice
7 or transaction ~~which~~ THAT is in violation of this article or order or
8 assurance of discontinuance entered under this article, ~~he~~ THE ATTORNEY
9 GENERAL may FOR THE PURPOSES OF ESTABLISHING A BASIS FOR INJUNCTIVE RELIEF OR
10 RESTITUTION:

11 1. Require such person to file on such forms as ~~he~~ THE ATTORNEY
12 GENERAL prescribes a statement or report in writing, under oath, as to all
13 the facts and circumstances concerning the sale or advertisement of
14 merchandise by such person, and such other data and information as ~~he~~ THE
15 ATTORNEY GENERAL may deem necessary.

16 2. Examine under oath any person in connection with the sale or
17 advertisement of any merchandise.

18 3. Examine any merchandise or sample thereof, or any record, book,
19 document, account or paper as ~~he~~ THE ATTORNEY GENERAL may deem necessary.

20 4. Pursuant to an order of the superior court, impound any record,
21 book, document, account, paper, or sample or merchandise material to such
22 practice and retain the same in ~~his~~ THE ATTORNEY GENERAL'S possession until
23 the completion of all proceedings undertaken under this article or in the
24 courts.

25 B. This section does not prohibit the attorney general from
26 investigation of violations of this article, including requesting a person to
27 respond to a complaint filed against him. A person cannot be compelled to
28 comply with a request to respond to a complaint except in accordance with
29 section 44-1527.

30 Sec. 2. Section 44-1528, Arizona Revised Statutes, is amended to read:
31 44-1528. Remedies: injunction: other reliefs: receiver

32 A. Following an investigation ~~made~~ OF A PERSON pursuant to section
33 44-1524 and when it appears to the attorney general AS A RESULT OF THE
34 INVESTIGATION that ~~a~~ THE person has engaged in or is engaging in any
35 practice declared to be unlawful by this article, ~~he~~ THE ATTORNEY GENERAL may
36 seek and obtain in an action in the superior court an injunction prohibiting
37 such person from continuing such practices or engaging in the practice or
38 doing any acts in furtherance of the practice after notice as is required by
39 the rules of civil procedure. The court may make such orders or judgments as
40 may be necessary to:

41 1. Prevent the use or employment by a person of any unlawful
42 practices.

43 2. Restore to any person in interest any monies or property, real or
44 personal, which may have been acquired by means of any practice in this
45 article declared to be unlawful, including the appointment of a receiver.

1 3. Prohibit a person found to have violated this article from engaging
2 in a specified trade or occupation.

3 B. Following an investigation made pursuant to section 44-1524 and
4 when it appears to the attorney general that a person has engaged in or is
5 engaging in a practice declared to be unlawful by this article and that such
6 person is about to conceal his assets or his person or leave the state, the
7 attorney general may apply to the superior court, ex parte, for an order
8 appointing a receiver of the assets of such person. ~~Upon~~ ON a showing made
9 by affidavit or other evidence that such person has engaged in or is engaging
10 in a practice declared to be unlawful by this article and that such person is
11 about to conceal his assets or his person or leave the state, the court may
12 order the appointment of a receiver to receive the assets of such person.

13 Sec. 3. Section 44-1531, Arizona Revised Statutes, is amended to read:
14 44-1531. Violations; civil penalties

15 A. If a court finds that any person has wilfully violated section
16 44-1522, the attorney general ~~upon~~ ON petition to the court may recover from
17 the person on behalf of the state a civil penalty of not more than ten
18 thousand dollars per violation.

19 B. For THE purposes of this section, a wilful violation occurs when
20 ~~the party~~ A NATURAL PERSON committing the violation knew or should have known
21 that his conduct was of the nature prohibited by section 44-1522.

22 C. NOTWITHSTANDING SECTION 44-1522, A WILFUL VIOLATION OF SECTION
23 44-1522 MAY OCCUR ONLY IF A PERSON HAS BEEN MISLED, DECEIVED OR DAMAGED BY
24 THE VIOLATION.

25 Sec. 4. Section 44-1533, Arizona Revised Statutes, is amended to read:
26 44-1533. Cumulative remedies

27 A. The provisions of this article are in addition to all other causes
28 of action, remedies and penalties available to this state, EXCEPT THAT NO
29 ADDITIONAL, SUBSEQUENT CIVIL PENALTIES ARE AVAILABLE TO THIS STATE UNDER THIS
30 ARTICLE IF THIS STATE HAS ALREADY IMPOSED CIVIL PENALTIES PURSUANT TO ANOTHER
31 LAW FOR THE SAME ACT OR PRACTICE.

32 B. ~~The provisions of~~ This article shall not bar any claim against any
33 person who has acquired any monies or property, real or personal, by means of
34 any practice declared to be unlawful by this article.